

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH DIVISION**

[illegible]

DEFENDANTS BOEHRINGER INGELHEIM PHARMACEUTICALS, INC. AND
ELI LILLY AND COMPANY’S MOTION TO DISMISS PLAINTIFF’S
FIRST AMENDED COMPLAINT

Pursuant to Federal Rules of Civil Procedure 8(a), 9(b), and 12(b)(6), Defendants Boehringer Ingelheim Pharmaceuticals, Inc. (“BIPI”) and Eli Lilly and Company (“Lilly”) (together, “Defendants”)¹ submit this Motion to Dismiss Plaintiff’s First Amended Complaint (“FAC”) for failure to state a claim upon which relief can be granted.

Plaintiff's FAC should be dismissed in its entirety for two reasons. *First*, Plaintiff's failure to warn and design defect claims are preempted by federal law, because Defendants could not have changed the Jardiance label or redesigned Jardiance without prior permission from the

¹ As of the date of this filing, Defendants Boehringer Ingelheim Pharma GmbH & Co. KG and Boehringer Ingelheim International GmbH have not been served in this action.

U.S. Food and Drug Administration. *Second*, Plaintiff's FAC remains laden with conclusory allegations that are insufficient to meet federal pleading standards, despite direction from this Court to include factual allegations.

WHEREFORE, for these reasons and as more fully set forth in the Memorandum in Support filed contemporaneously with this Motion, Plaintiff's First Amended Complaint should be dismissed in its entirety. A proposed Order is attached.

Dated: March 22, 2017

Respectfully submitted,

/s/ Wendy West Feinstein

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CERTIFICATE OF SERVICE

I certify that on March 22, 2017, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered users, including the below-listed counsel of record:

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